



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CHARLES W. PENLAND, SR., and §
MARY A. PENLAND, §
Plaintiffs, §
§
vs. § CIVIL ACTION NO. 6-07-3284-HFF-WMC
§
UNITED STATES DISTRICT COURT AT §
GREENVILLE, SOUTH CAROLINA, and §
JERRY SAAD, Court Appointed Receiver in §
Criminal Case 7:05-710, §
Defendants. §

ORDER

This case was filed as a pro se action. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that 1) the action be dismissed without prejudice and without service of process, and 2) the dismissal be deemed a strike for purposes of the three strikes rule of 28 U.S.C. § 1915(g) with respect to Plaintiff Charles W. Penland, Sr., only. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 18, 2007, and the Clerk of Court entered Plaintiff Charles Penland's objections to the Report on October 29, 2007. The Court has carefully reviewed the objections but finds them to be without merit. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules the objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that 1) the action be **DISMISSED** without prejudice and without service of process, and 2) the dismissal be deemed a **STRIKE** for purposes of the three strikes rule of 28 U.S.C. § 1915(g) with respect to Plaintiff Charles Penland, only.

On October 24, 2007, the Clerk of Court entered Plaintiff Charles Penland's Motion to Amend the Complaint. In the motion, he seeks to add the Acting Commissioner of the Internal Revenue as a defendant. The motion is **GRANTED** as a matter of right. Nevertheless, because 1) the Commissioner is immune from suit, and 2) the Anti-Injunction Act forbids actions such as this when brought against the Commissioner, the claim against the Commissioner is hereby **DISMISSED**.

IT IS SO ORDERED.

Signed this 31st day of October, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 60 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.